



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 27 2012

Katherine A. Belinski, Esq.
Nossaman LLP
1666 K Street, NW, Suite 500
Washington, DC 20006

RE: MUR 6585
Edolphus Towns
Gwendolyn Towns
Committee to Re-Elect Ed Towns
Albert C. Wiltshire in his official
capacity as treasurer

Dear Ms. Belinski:

On June 7, 2012, the Federal Election Commission notified your clients, Edolphus Towns, and the Committee to Re-Elect Ed Towns and Albert C. Wilshire in his official capacity as treasurer, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On August 15, 2012, the Commission notified your client, Gwendolyn Towns, of the complaint. A copy of the complaint was forwarded to your above-referenced clients ("respondents") at those times.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on November 20, 2012, found that there is reason to believe that the respondents violated 2 U.S.C. § 439a, a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Respondents may submit any factual or legal materials that they believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that the respondents have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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RTB Notification Letter re.
Edolphus Towns
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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Caroline C. Hunter
Chair

Enclosure
Factual and Legal Analysis

14044352059

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Edolphus Towns

MUR: 6585

Gwendolyn Towns

Committee to Re-Elect Ed Towns and
Albert C. Wiltshire in his official
capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by the Campaign Legal Center, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Edolphus Towns ("Representative Towns"), Gwendolyn Towns, and the Committee to Re-Elect Ed Towns and Albert C. Wiltshire in his official capacity as treasurer (the "Committee").

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The Complaint alleges that Representative Towns, through his principal campaign committee, the Committee to Re-Elect Ed Towns, has converted campaign funds to personal use based on news accounts that Gwendolyn Towns uses a campaign-financed vehicle for non-campaign activities, including driving to and from her place of employment. Compl. ¶ 2. In relevant part, an *Inside Edition* article cited in the complaint states:

While we were looking for Congressman Town's car, we also noticed his wife driving another luxury vehicle, an Infiniti, with congressional tags. She was observed day after day - driving to the carwash, the dry cleaners and back and forth to work at a local hospital. But Towns doesn't pay for that car either. We found records showing the \$602 lease on the Infiniti is paid for with the congressman's campaign funds. Experts say that is an apparent violation of campaign finance rules.

Inside Edition Investigates Congressional Cars, INSIDE EDITION (May 1, 2012),

<http://www.insideedition.com/news/8119/inside-edition-investigates-congressional-cars.aspx>;

see also Alison Gendar, *Congressman Ed Towns' Wife Gwen Tools Around Brooklyn in Car Paid for by Hubby's Campaign*, N.Y. DAILY NEWS (May 1, 2012), <http://www.nydailynews.com/new-york/brooklyn/congressman-ed-towns-wife-gwen-tools-brooklyn-car-paid-hubby-campaign-article-1.1070862>.

The Complaint notes that the Committee's disclosure reports reflect monthly automobile lease payments of \$602.43 for at least 12 months, but do not reflect that Towns or his wife reimbursed the campaign for any personal use of the vehicle. Compl. ¶¶ 7-8.

The Respondents maintain that the Complaint's allegation that the campaign-financed vehicle at issue was used solely for personal use is baseless and inaccurate. Committee Resp. at 3; Gwendolyn Towns Resp. at 2. The Respondents admit that the vehicle at issue is used for personal activities in addition to campaign activities. *Id.* They assert, however, that the personal use of the vehicle is paid for by Towns and his wife through the vehicle expenses they pay out of their personal funds. Committee Resp. at 3; Gwendolyn Towns Resp. at 3.

The Respondents explain that during the height of the 2010 election, Representative Towns and Gwendolyn Towns executed a three-year lease for a 2010 Infiniti G37 automobile

that they intended to use for mixed campaign and personal purposes. Committee Resp. at 1; Gwendolyn Towns Resp. at 1. According to the Respondents, the monthly payment on the lease is \$602.33, and the Committee paid this expense monthly, totaling \$14,316.34 as of the date of the Complaint, which covers approximately two years of the three-year lease.

Committee Resp. at 1, 3 n.3; Gwendolyn Towns Resp. at 1, 3 n.3. They maintain that additional monthly expenses for insurance and fuel totaling approximately \$250 to \$300 are paid by Representative Towns or Gwendolyn Towns from their personal funds to cover the apportioned cost of the vehicle for the amount of time he and his wife used it for personal purposes. Committee Resp. at 1; Gwendolyn Towns Resp. at 1. The Respondents note that insurance on the vehicle is approximately \$175 per month and that the cost of premium fuel varies widely. Committee Resp. at 2 n.1; Gwendolyn Towns Response at 1 n.1. Based on these figures, they state that the total cost of operating the leased vehicle at issue is between approximately \$850 and \$900 per month on average, and, of that amount, the campaign pays approximately \$600 and Representative Towns pays \$250 to \$300 per month. Committee Resp. at 3; Gwendolyn Towns Resp. at 3.

The Respondents maintain that "the vehicle is primarily located and used in Brooklyn by Gwendolyn Towns, the Congressman, and campaign staffers." Committee Resp. at 2; Gwendolyn Towns Resp. at 1. They state that Gwendolyn Towns frequently uses the vehicle to participate in campaign or officeholder events in Brooklyn, including monthly meetings of the Women's Caucus, Concerned Women of Brooklyn, IMC Auxiliary, the Men's Caucus, the ARTC Board of Directors, the board of the Bedford YMCA, the Unity Democratic Club, and various neighborhood and block association meetings. Committee Resp. at 2; Gwendolyn

Towns Resp. at 1-2. The Respondents further state that Gwendolyn Towns also uses the vehicle to travel to Albany for the Black and Puerto Rican Caucus meetings and the vehicle has been driven to Washington, DC on several occasions to participate in events. Committee Resp. at 2; Gwendolyn Towns Resp. at 2.

According to the Respondents, in April 2012, Representative Towns announced that he would not seek re-election for a sixteenth term, and the Committee is in the process of winding down. Committee Resp. at 1; Gwendolyn Towns Resp. at 1. The Respondents assert that as the Committee engages in the process of winding down and the use of the vehicle shifts from heavy campaign use to increased personal use, Representative Towns fully intends to reimburse the Committee in a manner that is proportionate to the use of the vehicle, and ultimately will take over the lease payments entirely. Committee Resp. at 3; Gwendolyn Towns Resp. at 3. The Respondents maintain that Representative Towns's calendar entries, bills and receipts provide a sufficient record to determine the proportion of the vehicle expenses attributable to campaign uses relative to personal activities, although Respondents do not attach these records to their response. Committee Resp. at 3 n.4; Gwendolyn Towns Resp. at 3 n.4.

B. Legal Analysis

Under the Act and Commission regulations, a candidate and the candidate's committee have wide discretion in making expenditures to influence the candidate's election, but may not convert a contribution or donation described in 2 U.S.C. § 439(a) to the personal use of the candidate or any other person. 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.1(g). A

contribution or donation is considered personal use if it is used for a noncampaign-related automobile expense. 2 U.S.C. § 439a(b)(2)(C).

Commission regulations provide guidance regarding what would be considered personal use of campaign funds. Personal use is defined as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” 11 C.F.R. § 113.1(g).

Commission regulations list a number of purposes that constitute personal use *per se*. 11 C.F.R. § 113.1(g)(1)(i). Where a specific use is not listed as personal use, the Commission makes a determination on a case-by-case basis whether an expense would fall within the regulation’s definition of personal use. 11 C.F.R. § 113.1(g)(1)(ii). The regulations specifically identify types of expenses that are subject to a case-by-case analysis, including non-*de minimis* vehicle expenses. *Id.* Under that provision, if a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder related activities, “the portion of the vehicle expenses associated with the personal activities is personal use,” unless the campaign account is reimbursed within 30 days for the expenses associated with the personal activities. *Id.* For uses of campaign funds that are both personal use and campaign or officeholder use, “a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use” and this log or record must be updated with each personal use. 11 C.F.R. § 113.1(g)(8).

Here, the Respondents admit that the vehicle at issue is used in part for personal activities. See Committee Resp. at 3; Gwendolyn Towns Resp. at 2. Significantly, although the Respondents state that “[their] personal uses of the vehicle are only a fraction of the overall use of the vehicle,” Committee Resp. at 3; Gwendolyn Towns Resp. at 3, they do not identify what fraction of that use was personal, nor do they claim that the amount of personal use was *de minimis*.

Absent a basis for the Commission to conclude that the personal use of the vehicle amounted to a *de minimis* use, the Commission’s regulations require “the person(s) using the vehicle for personal activities [to] reimburse the campaign account within thirty days for the expenses associated with the personal activities.” 11 C.F.R. § 113.1(g)(1)(ii)(D). Otherwise, the portion of the vehicle’s expenses associated with personal activity is deemed personal use.

The Respondents assert that Representative Towns and his wife covered the costs associated with their personal use of the vehicle by paying for related vehicle expenses such as insurance and gasoline from personal funds. Even if true, this method of apportioning costs would not comply with the requirements of the law, which requires reimbursement of “the campaign account within 30 days.” *Id.* It further avoids disclosure of the reimbursements in the disclosure reports of the Committee, and thus impermissibly removes that activity from the public record.

In addition, review of the Committee’s disclosure reports reveals that, between August 2010 and May 2011, the Committee made at least \$717.09 in payments the purpose of which is described as “gas” or to Representative Towns for “Reimbursement gas and tolls” or “reimbursement for gas, meeting.” See 2010 October Quarterly Report at 32, 46-47; 2010

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Pre-General Report at 21; 2011 July Quarterly Report at 79. Consequently, Representative Towns may not in fact have paid all monthly expenses for fuel from personal funds to cover the portion of the leased vehicle that was used for personal activities.

Because Representative Towns and Gwendolyn Towns did not reimburse the Committee for personal use of the vehicle in accordance with the regulations concerning personal use and vehicle expenses, the Commission finds reason to believe that Edolphus Towns, Gwendolyn Towns, and the Committee to Re-Elect Ed Towns and Albert C. Wiltshire in his official capacity as treasurer violated 2 U.S.C. § 439a.